

11 San Francisco, California  
Tuesday, September 17, 2024

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING 11:05 - 11:50 = 45 MINUTES

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1 Tuesday, September 17, 2024

11:05 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oo--

4 THE CLERK: The first matter on this morning's  
5 docket, the Court calls 3:23-CV-4146-VC-RNI, Colvin, et al.  
6 versus Roblox Corporation, et al.

7 Parties, please state their appearances for the record,  
8 beginning with Plaintiffs.

9 MR. FREEDMAN (via Zoom): Good morning, your  
10 Honor. Aaron Freedman representing the Plaintiffs in the  
11 Colvin v. Roblox matter.

12 MR. SEIDMAN (via Zoom): Good morning, your Honor.  
13 Jake Seidman, Gibbs Law Group, also representing the  
14 Plaintiffs Colvin.

15 MR. COHEN (via Zoom): Good morning, your Honor.  
16 Brett Cohen from Leeds Brown, also with the Plaintiffs.

17 THE COURT: Good morning.

18 MS. DEMAS (via Zoom): Good morning, your Honor.  
19 On behalf of Roblox Corporation, Tiana Demas from Cooley,  
20 LLP.

21 MR. SALDANA (via Zoom): Good morning, your Honor.  
22 Robby Saldana from Cooley, LLP, representing Defendant  
23 Roblox Corporation.

24 THE COURT: All right. And that's it. Okay. All  
25 right. Good morning everyone.

1       All right. So, we're here on the parties' joint letter  
2 brief, Document 103, which is essentially a motion to compel  
3 by Plaintiffs.

4       So, let me hear from Plaintiffs first. Who wants to  
5 take the lead on this one?

6                   MR. FREEDMAN: That would be me today, your Honor.

7                   THE COURT: All right.

8                   MR. FREEDMAN: By way of brief background, this  
9 case is about Roblox's awareness and facilitation in a  
10 growing ecosystem of illegal gambling websites that operate  
11 on the Roblox platform targeting Roblox's minor users for  
12 use of Roblox's technology and which relies on Roblox's  
13 proprietary currency, Robux.

14          Now, Plaintiffs' core claim against Roblox is that of  
15 negligence in that Roblox failed to use reasonable care in  
16 designing and managing its technology and platform,  
17 especially after learning about the virtual casino websites.  
18 And, to that end, Plaintiffs have served an initial set of  
19 RFP's which we did in March in an attempt to answer three  
20 core questions which speak to the core issue in this case,  
21 Roblox's negligence.

22          Those questions are, one, what did Roblox know about  
23 the virtual casino's use of its technology and platform,  
24 two, when did they know it, and, three, why haven't they  
25 stopped these websites from preying on their minor users.

1       Accordingly, Plaintiffs chose a relevant time period  
2 that captures context necessary to answer these questions  
3 and have sought discovery about Roblox's use of third party  
4 services to review the safety and appropriateness of its  
5 platform as well as the ways that it can be exploited by  
6 virtual casino websites and any bad actor over the relevant  
7 time period.

8       And, your Honor, I'd like to take each one of those  
9 issues one at a time.

10      THE COURT: All right.

11           MR. FREEDMAN: So, starting with the relevant time  
12 period, Plaintiffs' proposed start date logically advances a  
13 material aspect of our case, and evidence about Roblox's  
14 awareness of websites existing in 2017 and 2018 tend to show  
15 Roblox's knowledge, awareness, and response to an emerging  
16 problem with its platform, which is obviously relevant to  
17 Roblox's negligence and whether they exercised reasonable  
18 care in attempting to prevent this growing ecosystem of bad  
19 actors.

20           Now, while Roblox continues to argue that there are no  
21 relevant documents prior to 2019, Plaintiffs have discovered  
22 in the public record evidence that third party Robux  
23 gambling websites existed as far back as June 2016. Your  
24 Honor, we discussed it at length in the brief. The evidence  
25 that we found of a website called RBXWild.com. Now, this

1 website used Roblox's technology, platform, virtual content,  
2 and proprietary currency in the exact same ways as Roblox's  
3 Co-Defendants later would starting in 2019.

4 Roblox ignores all of this in the brief. They claim it  
5 does not matter, that the only similarity is the similarity  
6 in the name. But, your Honor, that's -- that's just not  
7 true. These -- this 2016 website offers the same game as  
8 its -- as those that would later follow it. It connects to  
9 the Roblox platform in the same way. It preys on children  
10 in the same way through social media like Discord.

11 I have a whole host of factors, your Honor, I could go  
12 through, but the important thing here is that while Roblox  
13 claims that all of this evidence is categorically  
14 irrelevant, it's just not supported by the public record.  
15 And it shows their awareness, knowledge, and potential  
16 investigations into this emerging problem before 2019.

17 Now, we've repeatedly asked Roblox about when they  
18 first learned about the existence of virtual casino websites  
19 that use their technology, platform and currency in the same  
20 way as its Co-Defendants. They have stonewalled us at every  
21 point.

22 Typically the response we get, your Honor, is, I  
23 personally haven't seen any documents before 2019. But to  
24 that exact point, your Honor, I think there's a perfect  
25 example of the way in which they've tried to dodge this

1 question in the joint letter brief.

2 On page five, they -- they talk about the Plaintiffs  
3 may not have used it, but they do not say at any point in  
4 their section that they were either, one, not aware of this  
5 website in 2016 or, two, not aware of virtual casino  
6 websites before 2019.

7 Further, your Honor, Plaintiffs' allegations clearly  
8 state that the named Defendants are merely primary players  
9 in this growing and changing ecosystem of virtual casino  
10 websites that all use Roblox's technology, platform, and  
11 currency to prey on minors in the same way. And in this  
12 way, Roblox's response to the first virtual casinos are  
13 relevant to provide context. It speaks to the notice they  
14 have of the security flaws in their platform and goes  
15 directly to whether or not Roblox acted reasonably after  
16 learning about these websites.

17 Our start date is reasonably calculated to lead to the  
18 discovery of admissible evidence about what Roblox knew  
19 about the emergence of these websites, when they knew it,  
20 and the reasonableness of their policies, procedures and  
21 investigations after they started emerging.

22 THE COURT: Let me from -- let me hear from Roblox  
23 on the -- the issue of the burden of an expense of adding  
24 those two years. I mean, from your own admissions, there  
25 are probably very little to none and very little to no

1 activity on those sites. What would be the burden and the  
2 expense for you guys to -- to modify that date to January  
3 1st as opposed to 2019?

4 MS. DEMAS: your Honor --

5 THE COURT: (Zoom glitch.)

6 MS. DEMAS: Sorry. I did not mean to speak over  
7 the Court, and I would like to address Mr. Freedman's other  
8 statements, but I'll -- I'll start with your Honor's  
9 question. The -- the burden would be extensive, and the  
10 reason is this. For every -- for every, you know, terabyte  
11 of data that we add, right, and -- and that needs to be  
12 taken off of Roblox's systems, stored with the -- the third  
13 party provider, the discovery platform provider, those  
14 storage costs alone which we would have to do to -- to go  
15 back to 26 -- or, sorry, 2017, are in the hundreds of  
16 thousands of dollars, and -- and we've seen this with other  
17 custodians where, you know, for -- for one platform alone,  
18 for one of the communication methods alone, we have gotten  
19 estimates to that length, just for single custodians.

20 So, the problem is that when we're pulling documents  
21 and when we're going back for a time period, we're doing it  
22 on a custodian basis, and when you increase the level of  
23 storage, like just getting it to the review platform so that  
24 we can -- so that attorneys can review it as a significant  
25 cost.

1       But, so -- so, it is not a matter of, Okay, well,  
2 there's nothing there, and, so, we're adding nothing, and,  
3 so, there's no burden. There's a whole front loading step  
4 of getting the universe of potential documents to the review  
5 platform so attorneys can run searches and determine there's  
6 nothing there.

7       Now, but I -- but I would like to take issue with a  
8 number of statements that Mr. Freedman made because, you  
9 know, irrelevant discovery, as the Court is aware, is  
10 necessarily burdensome. And contrary to Mr. Freedman's  
11 statements before the Court, the claims in this case are  
12 quite specific, and they target three specific virtual  
13 casino websites. Those sites are RBXFlip, Bloxflip, and  
14 RBLXWild, with an L. These sites are not on Roblox. These  
15 are third party sites that Roblox does not own, control, or  
16 operate, and Plaintiffs know this. They know from the  
17 discovery they've received so far that Roblox has repeatedly  
18 taken steps to try to get the hosting providers of these  
19 sites to take them down.

20       The complaint even incorporates an interview with the  
21 founder of RBXFlip, one of the three named VCW's, describing  
22 Roblox's efforts to detect and block the unidentified bot  
23 accounts that RBXFlip was using.

24       And I also want to take a step back and just level set  
25 about the -- the "proprietary technology" that -- that

1 Plaintiffs claim that are being used. These sites tell  
2 users to give over their Roblox credentials. So, you can do  
3 this in one of two ways. If you have a Roblox account, you  
4 can give your username and password. You give it to these  
5 third party sites, and they log in on your behalf or you can  
6 cut and paste what's known as a Roblox security cookie,  
7 which is just another way of getting access to one's  
8 account.

9 And -- and Judge Chhabria, in dismissing the RICO  
10 claim, rejected the theory that this was, you know, some  
11 sort of special technology. This is just third party sites  
12 asking users to hand over their credentials.

13 Now, Plaintiffs have sued Roblox and these three  
14 entities only. The VCWs -- and that's what I'm just going  
15 to call them, the Virtual Casino Websites, these three  
16 sites, they've not appeared. The clerk entered a default  
17 against one of them for the original complaint, and the  
18 complaint itself makes clear that this case is about Roblox  
19 and those three VCWs and not, as Plaintiffs argue in the  
20 joint letter, other VCWs, plural.

21 The very first paragraph of the complaint says that  
22 this case is about Roblox and it's "coconspirators", even  
23 though Judge Chhabria dismissed the conspiracy claim, and it  
24 names the three coconspirators as Satozuki, Studs, and  
25 RBLXWild. Those are the three corporate entities behind

1 RBXflip, Bloxflip, and RBLXWild. The citations in  
2 Plaintiffs' part of the joint letter confirm that this case  
3 is about those three VCWs.

4 THE COURT: Okay. But -- but -- I understand  
5 that, but isn't your conduct with regards to those VCWs what  
6 you knew, what you should have known, what you may have  
7 learned in your dealings with other VCWs in 2016, 2017,  
8 2018, aren't those things that are important for them to  
9 show what you could or should have known when in 2019 these  
10 three came online? And what were your actions? What --  
11 what did you guys talk about? What were your -- you know,  
12 what were you doing about those VCWs in 2018? Doesn't that  
13 inform their case as to -- as to your responsibilities?

14 MS. DEMAS: No, your Honor, because their -- their  
15 theory rests on a false premise, and -- and the complaint  
16 makes this quite clear in terms of what they actually do  
17 allege. The complaint alleges that the first VCW came into  
18 existence in 2019, and -- and if you look at the record that  
19 the Plaintiffs have proffered as their supposed evidence of  
20 another VCW, this Internet archive record from the Wayback  
21 Machine from 2016. That -- that shows a site with a  
22 different name, RBXflip, that, contrary to what Mr. Freedman  
23 has -- has just said, is nothing like the three named in the  
24 complaint. It has a similar name. It appears to have been  
25 used by four people in its entire history. It was indexed

1 on a single day in 2016 when it had any content to speak of.  
2 The next index record after that the site was for sale, but  
3 there's no indication whatsoever about how that site works  
4 except for Plaintiffs' counsel's say so. On the day that it  
5 was indexed, it had zero games, zero users, zero wins, and  
6 the summary shows a grand total of four historical users  
7 which were probably the site's developers and maybe some of  
8 their friends, but -- but the idea that just because having  
9 a similar name and -- and using the -- the word RBLX and  
10 mentioning Roblox means that the site is anything like the  
11 VCWs is simply not supported by the evidence that they've  
12 put before the Court.

13 THE COURT: Let me ask -- let me ask Mr. Freedman  
14 a question. You -- you heard the arguments regarding the  
15 unduly burdensome with regard to costs and expenses with  
16 this. Is there not a more cost-effective way for you to  
17 find out what they knew prior to 2019 that could come about  
18 through other means in this case without having to have them  
19 indexed prior to your knowing that they knew about these  
20 sites? So, in other words, if you were to find out at a  
21 later date through other discovery that -- that they knew  
22 about those sites, then you could, you know, move for -- for  
23 what that would look like and may even be more targeted.

24 In this case, where they're doing a -- an entire sweep  
25 during those years, isn't that -- wouldn't it be correct

1 that it would be over burdensome for them to do that?

2           MR. FREEDMAN: Respectfully, your Honor, I -- I  
3 don't agree with that proposition, and -- and I -- I just  
4 want to clarify we have a -- attempted a number of times in  
5 a number of different ways to get this answer. I think it's  
6 important to note also that my co-counsel -- or opposing  
7 counsel did not answer the question of whether or not they  
8 were aware of casinos prior to 2019 in her response.

9           We have served RFAs. We've asked that multiple  
10 conferrals for a list of casinos. We have that memorialized  
11 in a letter, even though they claim those requests did not  
12 happen. Your Honor, we are attempting time and time again  
13 not just to understand the full scope of the universe of  
14 these virtual casino websites, but what's important, again,  
15 to the core claim in this case is what Roblox knew, when  
16 they knew it and what they did based on that information.

17          And I do want to clear up what Ms. Demas said about the  
18 complaint. She either misread or misinterpreted allegation  
19 14, which goes specifically to this issue, right. Roblox  
20 repeatedly tries to argue that -- that the complaint itself  
21 only is about three virtual casino websites. And, while  
22 it's true that those are the three Co-Defendants of Roblox,  
23 allegation 14 states Roblox allows third party gambling  
24 websites, including Defendants' highly popular casinos.

25          Allegation 74, which they cite, we say that RBXFlip was

1 the first major third party gambling website.

2       The -- the law supports a proposed start date of 2017.  
3 And in terms, returning to the question about burden, your  
4 Honor, that is Defendants' burden to -- to prove, and they  
5 haven't. Besides kind of vague illusions to cost and today  
6 Ms. Dimas saying, We've received some estimates and it will  
7 be in the hundreds of thousands, they did not submit an  
8 affidavit. I understand that we weren't able to attach  
9 exhibits, but they've -- they've never represented that to  
10 us. They've never given us any affidavit or any  
11 information. And Federal Rule of Civil Procedure 6(b) (1)  
12 has a number of factors which are instructive here in  
13 considering whether or not Defendants have met their burden  
14 in determining based on the manifest weight of those factors  
15 whether or not a proportionality argument exists.

16       Roblox is unable to satisfy any of those individual  
17 factors, let alone carry the manifest weight. Roblox solely  
18 has information about what they knew about the emergence of  
19 this growing problem. We are trying to understand when they  
20 knew it, what they learned about it, and what they did or  
21 should have done with that information.

22       And Ms. Demas is -- is just flat wrong, unfortunately,  
23 about what that evidence that we found that we gave to  
24 Roblox shows.

25       Your Honor, we would be happy to submit that to you if

1 you would require it. However, I think that what Roblox is  
2 attempting to do is attempting to make this about the  
3 existence of -- of individual casinos that may have existed  
4 at certain points before 2019. Again, returning to the core  
5 claim in this case, it's Roblox's negligence in failing to  
6 stop these. So, what they knew, when they knew it is  
7 important, relevant, and justifies a time period that  
8 provides Plaintiffs with, as your Honor noted, the necessary  
9 context to understand whether or not they were or were not  
10 reasonable in failing to stop the proliferation of these  
11 gambling websites.

12 THE COURT: All right. Ms. Demas, I'll give you  
13 the last word on this issue.

14 MS. DEMAS: Your Honor, I'd like to first take  
15 issue with Mr. Freedman's assertion that they -- they've  
16 sought this evidence in other ways. We are here on a  
17 dispute about RFPs. Mr. Freedman mentioned RFAs, which we  
18 received literally last week. Our deadline to respond to  
19 those RFAs is not until about three weeks from now. So,  
20 it's -- it's a bit misleading to say that they could have --  
21 that they are trying to seek it in different ways and that  
22 we've somehow stonewalled them when our deadline to respond  
23 has not yet come.

24 I'd also say that with respect to, you know, the  
25 definition of these virtual casino websites, both in the

1 RFPs and -- and in the complaint itself, they've always been  
2 defined as these three. The first time we've ever seen --  
3 the first time the Plaintiffs have ever talked about the  
4 existence of another site was when they told us at a  
5 discovery conference back in -- or at the meet and confer  
6 back in August, months after we'd been meeting and  
7 conferring on this issue for sometime, and Roblox had even  
8 offered for specific RFPs to go back to a further time  
9 period when we were talking about things that -- you know,  
10 that we could do targeted searches for such as the  
11 ROBLOSECURITY cookie, and we offered to go back to 2017 for  
12 that.

13       But for this, to conduct broad ranging searches of --  
14 you know, for -- for documents going back two years earlier  
15 is incredibly burdensome, particularly when it's not based  
16 on the evidence that Plaintiffs claimed it was. When --  
17 when they referenced this other site to me, Mr. Freedman  
18 said, with a very happy grin on his face, We found evidence  
19 that Rblxwild existed as of 2016. Well, when I said, Okay,  
20 give us this evidence, same day he sent an email. It  
21 contained a totally different site, and he said, We're still  
22 looking for a connection between RBLXWild and RBLXWild. But  
23 the problem is that there just is none. And -- and given  
24 the limited nature of the claims in this case and given the  
25 fact that these virtual casino websites have always been

1 defined as three sites, it's -- it's patently irrelevant to  
2 point to a site that apparently had four users to take the  
3 entire relevant time period back to 2017, which is what  
4 Plaintiffs seek to do. This is -- this dispute is about a  
5 rule of construction. It's not about an individual RFP.  
6 It's about all of them, and -- and it would effectively  
7 require Roblox to go back and -- and pull two full years  
8 worth of documents for the custodians that we eventually  
9 agreed to, which there -- there isn't yet agreement on  
10 anyway.

11                   THE COURT: Let's move to the second issue and the  
12 question, which is RFP Number 61. I'll hear from Mr.  
13 Freedman on that.

14                   MR. FREEDMAN: Yes, your Honor. So, with respect  
15 to RFP 61, Plaintiffs seek documents about the reviews that  
16 Roblox commissioned to identify any risks and security flaws  
17 with its platform. In the public record, Roblox's Senior  
18 Director of Moderation has talked about these reviews, say  
19 that they are conducted to help Roblox address issues and  
20 assure parents that the platform is safe and appropriate for  
21 children.

22                   However, now, you know, six months after the RFP  
23 negotiations began, Roblox claimed for the first time that  
24 these documents aren't relevant because they won't -- and  
25 this is the quote they used "concern" gambling. And I think

1 that's really where the crux of this dispute is.

2 Your Honor, this is a misrepresentation and, honestly,  
3 just flatly wrong. What they've attempted to do is make a  
4 semantic argument that unless these reviews say the word  
5 "gambling" or they were specifically commissioned to address  
6 gambling, they're not relevant.

7 Trying to -- to bound relevance here by the existence  
8 of that word or that -- that designed purpose is misleading  
9 because it ignores the entire process that these virtual  
10 casinos go through to, one, access Roblox's website, two, to  
11 operate bot accounts, three, to connect Roblox's accounts  
12 belonging to minors to their websites, four, accessing the  
13 -- the minor's account to initiate transactions and -- and  
14 the ways in which they solicit these transactions on  
15 Roblox's website.

16 The ways in which the virtual casinos use and exploit  
17 Roblox's technology and platform are -- are not bound by  
18 mere mention of gambling in these reviews, and -- and we  
19 anticipate that these security reviews are going to discuss  
20 each step and each security flaw that these websites  
21 explore.

22 THE COURT: Hang on just one second.

23 MR. FREEDMAN: Yes, your Honor.

24 (Pause.)

25 THE COURT: All right. Sorry. Continue.

1                   MR. FREEDMAN: No problem, your Honor. Kind of  
2 tie a -- to tie a bow on the -- on the relevance of it,  
3 understanding the recommendations made to Roblox to address  
4 these issues, things like a minor's ability to connect their  
5 Roblox account to third party bad actor websites or Roblox's  
6 deficient age verification software, which merely requires a  
7 child to self-report their age, regardless of whether or not  
8 they lie or not, deviations from industry standards in child  
9 safety and the sufficiency of Roblox's tools and procedures,  
10 which are designed to eliminate suspicious or harmful  
11 activity which they discuss in some detail in their terms of  
12 service and community standards, all of that is relevant  
13 regardless of whether or not it is specifically tied to a  
14 specific virtual casino or whether the report was  
15 specifically made to address virtual casinos as compared to  
16 any bad actor that uses the same process, tools and exploits  
17 the same flaws as the virtual casinos in this case.

18                   THE COURT: All right. Ms. Demas or whoever's  
19 going to take the lead on this one.

20                   MR. SALDANA: Thank you, your Honor. I'm going to  
21 argue for Defendant Roblox on this issue. I -- I think as a  
22 -- as a short of threshold matter, I am somewhat surprised  
23 by the focus on semantics by my opposing counsel because I  
24 -- I think the issue here for us is that there is a  
25 fundamental lack of relevance looking at the claims that are

1 alleged in the complaint. That's not semantics. It's  
2 what's alleged in the complaint, and what's alleged in the  
3 complaint concerns alleged offsite gambling. This is  
4 something that Judge Chhabria pointed out in his first  
5 motion to dismiss order. This is ECF 65, and Judge Chhabria  
6 noted on page eight in his order that the Plaintiffs do not  
7 allege that there is any gambling like experiences on  
8 Roblox's site itself. The only thing they allege is that  
9 there is offsite gambling on these third party off-platform  
10 websites.

11 So, in our view, you know, we -- when we look at RFP  
12 61, I just want to be clear, RFP 61 does not reference  
13 reports or concrete or discrete reviews. It's actually all  
14 documents related to your use of third party organizations  
15 to review websites and apps, to evaluate their safety and  
16 appropriateness for child and teen users that a parent can  
17 use when deciding whether a site or platform is safe for  
18 your kids. That is the RFP. It doesn't reference security  
19 flaws. It doesn't reference gambling at all, whether that's  
20 on platform or off platform.

21 So, in our view, when we saw this RFP, we objected on  
22 the basis of lack of relevance, and we think that this RFP  
23 is inherently burdensome because it is not connected to the  
24 claims in this case.

25 I did want to point out that we have objected to

1 burden, to -- we've objected to this RFP as -- as burdensome  
2 since we served our RNOs to Plaintiffs on May 3rd, 2024, and  
3 I just wanted to point that out because Plaintiffs claim  
4 that we have never pushed back on this RFP as -- as  
5 burdensome. But, you know, we -- we do think the request  
6 for production is burdensome in a number of ways, and I  
7 think the threshold way is that it doesn't have any  
8 connection with offsite gambling.

9       What I've heard today from opposing counsel is that  
10 this is about security reviews, this is about security  
11 flaws. But if you go and look at the Web page that they are  
12 now claiming as really the basis for this request for  
13 production and it's a Kenzo interview -- this is a separate  
14 third party that did an interview of one Roblox employee in  
15 December of 2021. There's no reference to security reviews.  
16 There's no reference to a security report. It's a  
17 generalized statement about Roblox partnering with third  
18 party organizations to ensure the safety and appropriateness  
19 of the platform for -- for children and teens.

20       That safety is about the content on the platform, and  
21 you can gather that from actually looking at the web page at  
22 the beginning where that employee is discussing what his job  
23 entails. It's not about processing or reviewing -- excuse  
24 me -- the processing of transactions on the platform.  
25 Everything you've heard today from Plaintiffs about what

1 happens on the Roblox platform, you know, the -- the bot  
2 accounts, the -- the use -- excuse me -- the PCWs, using bot  
3 accounts on the Roblox platform in order to exchange Roblox,  
4 that's just a transaction, and we've made clear to  
5 Plaintiffs, and we've pointed this out in our portion of the  
6 letter brief, that these third party organizations do not  
7 review on platform transactions.

8       And, so, even under their purported theory, you know,  
9 we don't see how this discovery is relevant to their claims.  
10 And I -- and I want to be clear, not only from what counsel  
11 has said today but also in their letter brief, they don't  
12 think any of this has to deal with alleged gambling in order  
13 for it to -- to be discoverable in this case, and I -- I  
14 think that's a problem. We need some guardrails because  
15 there is a -- a slippery -- slippery line between what will  
16 or will not show Roblox's purported awareness, but I think  
17 Plaintiffs are really pushing the line on here. You know,  
18 our -- our view, it's not semantic. It's that their claims  
19 concern offsite gambling.

20       We've already confirmed to them that none of these  
21 third party organizations review websites and apps for --  
22 for gambling or just generally. We're not using these  
23 organizations to review websites and apps off of the Roblox  
24 platform. And -- and, so, you know, we thought that that  
25 would have been the end of this -- this matter, and we

1 confirmed that to Plaintiffs over a month ago, before we  
2 filed this letter brief. And Plaintiffs sort of -- we  
3 thought they were going to narrow this RFP. They asked us  
4 to investigate this issue. We investigated the issue. We  
5 confirmed this in discovery correspondence, and then  
6 Plaintiff came back and said, Well, you know what? We want  
7 all of these reviews that have to do with safety whatsoever.

8 And here I think what we hear is a shift from safety to  
9 security, and these are fundamental -- it can be easy to --  
10 to conflate or to confuse these things, but they are not the  
11 same, and I think that's sort of clear when you look at the  
12 website that we've included in our portion of the letter  
13 brief about safety and civility on the Roblox platform.  
14 It's -- it's a different issue. These aren't about -- these  
15 aren't organizations that are -- are -- are focused on the  
16 issues that Plaintiffs think that they are focused on and  
17 certainly not anything that's connected to the claims in  
18 this case.

19 THE COURT: Have you turned over anything -- you  
20 said you agreed to respond to the RFPs about off-platform  
21 gambling. Has that already been done?

22 MR. SALDANA: To clarify, your Honor, and thank  
23 you, Plaintiffs had asked us to investigate whether these  
24 third party organizations review off-platform websites and  
25 apps for alleged gambling, and we confirmed that they do

1 not, and that was in written discovery correspondence. It  
2 wasn't formalized in responses and objections to the  
3 requests for production.

4 THE COURT: All right. Mr. Freedman?

5 MR. FREEDMAN: Yeah, it -- your Honor, there is a  
6 lot wrong with -- with what Mr. Saldana just said. You  
7 know, I think it's interesting that -- that they know --  
8 they said that this was just "one Roblox employee". This  
9 was their Senior Director of Moderation who they've actually  
10 put up as the 26(a) witness. And six months ago, when --  
11 when we drafted this request and we sent it to them, all of  
12 those arguments that Mr. Saldana just gave you, none of  
13 those have appeared up until this letter brief. I think we  
14 even noted it in our portion of the letter brief.  
15 Everything they've said about CSAM or foreign organizations,  
16 it was news to us even though we've been trying. And, while  
17 Mr. Saldana tried to describe this negotiation process as a  
18 back and forth between two willing participants, they just  
19 flatly denied our request to -- to understand what exists,  
20 and while Mr. Saldana says that, you know, that this is just  
21 some offhand statement, you know, Footnote 13 in the joint  
22 letter brief from their own website talks about their  
23 partnerships with over 20 leading global organizations that  
24 focus on child safety and Internet safety.

25 Your Honor, the argument that Roblox is making that it

1 has to specifically be an assessment of gambling, either off  
2 platform or on platform, is a gross oversimplification of  
3 how this process works. There are security flaws that allow  
4 this growing enterprise of casinos to exist. For example,  
5 if a child lies about their age and says they're above the  
6 age of 13, Roblox allows them to connect their Roblox bank  
7 account to third party websites. Now, the only age  
8 verification that exists on that platform is a 12 or 11 or 5  
9 year old being honest about how old they are. Roblox does  
10 not implement any way of later verifying whether that's  
11 true. Over the last seven years, gambling bot accounts have  
12 proliferated. Roblox has been a part of several litigations  
13 where these bot accounts are used for nefarious purposes.

14 Now, Roblox's awareness of that, the reviews that its  
15 20 leading global organization partners perform on -- on bot  
16 accounts or on the policies and procedures that it has to  
17 determine whether suspicious activity is occurring on its  
18 platform is relevant insofar as it is the same process and  
19 procedures that the virtual casinos use to prey on children  
20 on their platform. Well over a month ago we asked whether  
21 or not this statement by Mr. Joel Silk, Roblox's 26(a)  
22 witness, applied to off-platform gambling. Roblox quickly  
23 said, No, it does not. These are reviews of our own  
24 platform, at which point we said, Thank you. It's been four  
25 months to get that answer. And, so, then we want the

1 reviews of your platform to determine whether it's safe, and  
2 -- and this distinction that -- that Mr. Saldana seems to be  
3 trying to draw between safety and security, right, this is  
4 not anything that he has ever brought up to Plaintiffs.  
5 These are safety reviews of their platform. We are  
6 attempting to understand what they knew about the security  
7 issues or the safety issues that exist that allow this  
8 universe of illegal gambling websites to -- to proliferate  
9 and to prey on children.

10 THE COURT: But add to that then why wouldn't it  
11 be limited to things that concern gambling only? Why would  
12 it be opened up to everything?

13 MR. FREEDMAN: It's -- it's a great question, your  
14 Honor. Now, through conferral, Roblox has stated a number  
15 of times in a number of ways that they actually don't have  
16 specific units, job descriptions or policies related to  
17 gambling. There's kind of this more overarching umbrella  
18 term that they use that encompasses all off-platform  
19 transactions. Now, that is called real money transactions.  
20 And, so, there's a -- there's a distinction between whether  
21 or not a specific report or review is commissioned to  
22 address gambling or whether the word "gambling" exists as  
23 compared to there's a safety review conducted by one of  
24 these leading global organizations that says, Hey, by the  
25 way, you guys need some sort of age verification software

1 because children may lie about their age and then you give  
2 them privileges to connect their account to third party  
3 websites.

4 Now, that in the most -- you know, that wouldn't have  
5 to be about gambling, but it is what occurs here. It's what  
6 allows these websites to flourish on Roblox's website or,  
7 for example, they implement geofencing procedures which  
8 pretty much means if I create a -- a registered session in  
9 my office in Manhattan and then someone tries to access my  
10 account overseas like the virtual casinos do, the system  
11 should determine, hey, that's suspicious activity. We  
12 should log that out.

13 However, while they claim to have this procedure, it  
14 clearly doesn't work because Plaintiffs, like thousands of  
15 kids in this country, their accounts are being accessed by  
16 the gambling websites overseas, and that's borne out by the  
17 evidence, the -- the few hundred documents that Roblox has  
18 produced in the last six months.

19 So, what we're trying to understand is whether or not  
20 these leading global organizations talked about all of the  
21 ways in which any bad actor, including the virtual casinos,  
22 can exploit Roblox's platform to -- to conduct the  
23 transactions or solicit minors to link their accounts or  
24 whether or not their policies and procedures that are  
25 designed to identify and stop suspicious or harmful

1 activity, one is sufficient, two, whether there's been  
2 recommendations made that they have not heeded, and whether  
3 or not their inability to -- to prevent these websites from  
4 preying on children on their platform is reasonable. And  
5 it's especially relevant -- your Honor, as just kind of a  
6 final point here, it's especially relevant given Roblox's  
7 representations to Judge Chhabria at the most recent motion  
8 to dismiss hearing where they represented time and time  
9 again there's nothing that we can do besides be involved in  
10 this cat and mouse game with these virtual casinos.  
11 Plaintiffs disagree. The industry disagrees, and -- and we  
12 expect that the 20 leading experts that they have hired to  
13 assess whether or not their platform is safe and appropriate  
14 for children, we'll also disagree.

15 THE COURT: You also -- there's talk about in your  
16 -- your portion of the letter brief as well as theirs about  
17 limitations on this with regard to excluding child sexual  
18 abuse material, foreign organizations, things like that.  
19 What are those -- what do those limits look like?

20 MR. FREEDMAN: Your Honor, thank you for the  
21 question. I'm happy to address those. As Roblox knows,  
22 because we've been in negotiations for six months on a whole  
23 host of RFP's, Plaintiffs have offered a number of times,  
24 and Roblox has accepted every time a compromise on other  
25 RFP's that might hint at some documents that relate to CSAM.

1 We're trying to understand whether or not the -- the  
2 processes and procedures they implemented are reasonable.  
3 And, so, if there's a process or procedure that only  
4 addresses CSAM on the platform and it can only address CSAM,  
5 such as recommendations from NCMEC or the way in which they  
6 report CSAM specifically to local law enforcement, then  
7 we've said, Look, we get it, we're not looking for that  
8 information and we don't think that that's relevant.

9 With respect to foreign organizations, your Honor, this  
10 is a multinational company that exists online. I'm not  
11 exactly sure why somebody -- four organizations analysis of  
12 the safety risks inherent in Roblox's platform would not be  
13 relevant if it's the same safety issues that exist in the  
14 United States or with U.S. users.

15 You know, again, their -- their attempts to kind of  
16 bring CSAM into this at the eleventh hour is just that.  
17 They have never tried to -- to negotiate on this, and when  
18 we've -- we've tried to push them, understanding is this  
19 about off-platform game or is this about on-platform, they  
20 just flatly say, We will not provide documents. They don't  
21 know anything about the burden inherentness request because,  
22 again, your Honor, they have never searched, and they've  
23 never agreed to search for these documents.

24 So -- so, Plaintiffs are -- are willing, as we've been  
25 willing on a number of requests, to accept reasonable

1 limitations for processes, procedures, tools that have  
2 nothing to do with the process by which these virtual  
3 casinos exploit the platform if those cannot and can never  
4 be used to -- if remedying them would never fix or address  
5 this issue in any way.

6 THE COURT: All right. Here are my rulings on the  
7 two requests.

8 As to Plaintiffs' request for production to go back to  
9 2017, I'm going to grant in part and deny in part. I'm  
10 going to let you go back to January 1st of 2018. And the  
11 reason why I'm doing that is because I do find that you have  
12 met your relevancy burden. However, I do find that  
13 Defendants have put forth sufficient argument with regard to  
14 the burdensome and whether or not the -- the results of such  
15 a search would justify the burden -- the burdensomeness of  
16 such a search.

17 So, if you do that search in 2018 and you find a lot  
18 that justifies the burden and you want to come back to me,  
19 you can do so after a meet and confer with the other party,  
20 but I'm only going to do it for one year, and we'll see how  
21 that comes out.

22 With regard to your second request, RFP Number 61, I  
23 also find -- I will grant that request. I do find that you  
24 have met your relevancy burden in that case. I think that  
25 -- so, I overrule the objection based on irrelevance, and I

1 don't find that Defendants have met the burden of  
2 disproportionality standard in objections either. I do  
3 think that the reasonable limitations is appropriate in this  
4 case, and I'll have you guys meet and confer on that and to  
5 hopefully exclude CSAM in those -- in those productions.

6 What's the timeline, Ms. Demas, for you guys being able  
7 to get that stuff done, and when is discovery closed in this  
8 matter?

9 MS. DEMAS: Your Honor, there -- there is no set  
10 date for closing of discovery. We currently have a schedule  
11 that goes through class cert. The parties have amongst  
12 themselves agreed to submit a joint stipulation to the Court  
13 extending the discovery period for three months.

14 THE COURT: Okay.

15 MS. DEMAS: We have not yet done that, and -- and  
16 with respect to the Court's question of when can the parties  
17 get that done, I think -- I think there are a couple of  
18 questions baked into that. One is that there's going to be  
19 an additional meet and confer on RFP 61 --

20 THE COURT: Right.

21 MS. DEMAS: -- in terms of imposing reasonable  
22 limits.

23 THE COURT: Right.

24 MS. DEMAS: Which we -- I would assume that we can  
25 get done -- I mean, we have another meet and confer on

1 search terms and custodians this Friday. If the -- if the  
2 parties are available to extend that, we can do it as soon  
3 as this Friday.

4 I can't promise when the parties are going to -- you  
5 know, a date certain by which the parties actually reach  
6 agreement on those limits, but -- but I'm hopeful that that  
7 would be, you know, within short order, and -- and I don't  
8 -- with respect to the relevant time periods, for that one,  
9 I don't think there's anything left to meet on. It's -- the  
10 Court has met in the middle and put it at January 1, 2018.

11 THE COURT: Yeah. Okay. So, then what I'm going  
12 to do is I'll just issue the order requiring the meet and  
13 confer. The other option I could have is let you guys meet  
14 and confer and then file a joint proposed order. I don't  
15 know if that's necessary in this case. It seems like you  
16 guys would be able to work that out pretty smoothly, but  
17 it's up to you.

18 What do you guys -- what would you guys rather do, just  
19 have a -- a short granted in part, denied in part 2018 and  
20 then granted with a meet and confer requirement or do you  
21 guys want to prepare a proposed joint order on this one?

22 MS. DEMAS: Whatever is more convenient for the  
23 Court. I mean, I think functionally, we're going to need to  
24 take some of the same steps. It's just a question of  
25 whether the court would rather wait to -- to issue a

1 decision until there's, you know, a concrete proposal with  
2 respect to RFP 61.

3 THE COURT: Yeah, let's do that. Why don't I give  
4 you guys time to meet and confer and then get me a -- a  
5 proposed -- a joint proposed order and get it to me by the  
6 beginning of next week, send it to my proposed order email  
7 box.

8 Mr. Freedman, since you won most of this, I putting it  
9 on you. It's your responsibility to get it to me, but you  
10 guys work that out. There's a --

11 MR. FREEDMAN: Sounds good, your Honor.

12 THE COURT: -- proposed order -- there's a  
13 proposed order email box on my website. And since there's  
14 no -- there's no rush on getting the order in but you guys  
15 understand that that's just a written format of my oral  
16 rulings today.

17 So, all right. If there's nothing further from the  
18 parties, then I will dismiss you guys, and we'll move on to  
19 the next one. Thank you very much for your efforts today.

20 MR. FREEDMAN: Thanks for your time, your Honor.

21 (Proceedings adjourned at 11:50 a.m.)

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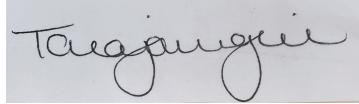
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3       I certify that the foregoing is a true and correct  
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7 the proceedings taken on the date and time previously stated  
8 in the above matter.

9       I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action  
11 in which this hearing was taken; and, further, that I am not  
12 financially nor otherwise interested in the outcome of the  
13 action.

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18                   Saturday, October 19, 2024

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